



September 9, 2024

Mr. Gregory Alan Ochs
Director, Central Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
901 Locust Street, Suite 462
Kansas City, MO 64106

Dear Mr. Ochs:

Re: **Response to Notice of Proposed Violation, Proposed Civil Penalty, and Proposed Compliance Order, CPF 3-2024-036-NOPV**

Dakota Gasification Company (DGC) has received the above-referenced Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) on June 28, 2024. On July 11, 2024, DGC requested additional time to respond, and an extension was granted until September 9, 2024. On August 28, 2024, DGC submitted a request for an informal settlement consultation and extension to the Notice response deadline to allow time for the consultation. Because DGC did not receive a response to its August 28 request, DGC is submitting this response to the Notice to prevent waiver of its rights to contest the Notice.

As addressed in more detail below, DGC contests the Proposed Civil Penalty and Proposed Compliance Order. While not admitting liability, DGC does not contest the alleged probable violations. Under 49 U.S.C. § 60117(b)(1)(B), and as provided in PHMSA's *Response Options for Pipeline Operators & Excavators in Enforcement Proceedings*, DGC respectfully requests an informal settlement meeting with the Central Region for clarification of the issues and to discuss the potential for use of a consent agreement to resolve this matter.

To preserve its rights, DGC also requests a hearing under 49 C.F.R. §§ 190.208 and 190.211 to address the Proposed Civil Penalty and terms of the Proposed Compliance Order. A preliminary statement of issues is included in this response, as required by 49 C.F.R. § 190.211(b). However, DGC hopes that a hearing will be unnecessary and that the parties can resolve this matter during the informal settlement meeting. DGC respectfully requests that PHMSA refrain from scheduling a hearing to provide the parties with sufficient time to attempt to informally resolve this Notice.

Response to Notice

Alleged Probable Violation Number 1 – Proposed Civil Penalty:

For alleged probable violation number 1 with a proposed civil penalty of \$19,100, DGC requests PHMSA consider the following additional information in determining the penalty amount under 49 C.F.R. § 190.225. At the time of the incidents noted, DGC did have a procedure in place for reporting incidents to PHMSA (refer to DGC procedure 74-001, Federal Requirements for Reporting Carbon Dioxide Pipeline Accidents). However, all the incidents in question were captured in DGC's internal incident reporting database and the releases were quantified for the purpose of reporting internal process safety related metrics, as DGC's



facility is covered under OSHA Process Safety Management (PSM) and EPA Risk Management Program (RMP). In evaluating the releases, the applicability of reporting to PHMSA was not evaluated. DGC's internal incident reporting database has since been updated to prompt the user about PHMSA reportable criteria by asking the user whether an incident is a PHMSA reportable accident. Given the information presented, DGC respectfully requests the elimination or mitigation of the proposed civil penalty. This would be consistent with 49 C.F.R. § 190.225(a)(1), (4) and (b)(2).

Alleged Probable Violations Numbers 2 and 3 – Proposed Compliance Order Sections A and B:

For alleged probable violations numbers 2 and 3, DGC requests PHMSA revise Sections A and B of the Proposed Compliance Order, which address these two alleged probable violations.

First, DGC requests clarification from PHMSA on whether its proposed actions are sufficient to meet Sections A and B's requirements. DGC has procured a consultant that specializes in pipeline risk analysis. The consultant uses semi-quantitative and quantitative risk assessment (QRA) risk models that evaluate the nine threats identified in industry standards and integrate all relevant information. The model will also be applied to areas not identified as high consequence areas (HCA). The deliverables will include a risk profile for the pipeline and recommended preventative and mitigative measures to address threats if unacceptable risk scores are identified.

Second, DGC requests clarification on the timelines and process in Sections A and B. Section A.1 requires DGC to provide revisions to its Carbon Dioxide Pipeline Integrity Management Plan and associated procedures to PHMSA for review within 90 days of receipt of the Final Order. Depending on when the Final Order is issued, 90 days may not be sufficient. Under Section B.1, DGC is to provide a risk model "in accordance with the updated procedures of requirement A above." This risk model is also due within 90 days of receipt of the Final Order. However, if the procedures and risk model are due at the same time, DGC will have to submit the risk model without knowing if PHMSA approves of the procedures. To avoid this inconsistency, the Proposed Compliance Order should be revised so that PHMSA will approve the procedures sufficiently in advance of the risk model's due date so that DGC can incorporate PHMSA's assessment of the procedures into the risk model.

Alleged Probable Violation Number 4 – Proposed Compliance Order Section C & Proposed Civil Penalty:

For alleged probable violation number 4 with a proposed civil penalty of \$59,500, which is addressed in Section C of the Proposed Compliance Order, DGC requests PHMSA revise Section C of the Proposed Compliance Order and reconsider the proposed civil penalty.

Regarding the Proposed Compliance Order, DGC requests clarification from PHMSA on whether its proposed actions are sufficient to meet Section C's requirements. Based on the results of the 2021 AC interference and mitigation study, DGC has developed a scope of work for the field installation of AC mitigation and has procured contractors to begin field installation this calendar year. Along with the installation of over 15,000 feet of 2/0 stranded bare copper wire with seventeen decouplers, the scope of work also includes the installation of fifteen test stations that will help monitor for stray currents.

Regarding the Proposed Civil Penalty, DGC requests PHMSA consider the additional information provided in this Response in determining the penalty amount under 49 C.F.R. § 190.225. The project described in the previous paragraph entails significant costs and, given the information presented, DGC respectfully requests the elimination or mitigation of the proposed civil penalty to reduce financial burden. This would be consistent with 49 C.F.R. § 190.225(b)(2).

Preliminary Statement of Issues

DGC respectfully contests the Proposed Civil Penalty and the Proposed Compliance Order and intends to raise the following issues at the informal hearing:

1. Whether the Proposed Civil Penalty is appropriate and in accordance with 49 C.F.R. § 190.225 or should be reduced or withdrawn.
2. Whether the Proposed Compliance Order is appropriate or should be modified or withdrawn.

DGC reserves the right to revise or supplement the preliminary statement of issues based on any new information or argument presented by PHMSA in this matter. DGC will be represented at the hearing by in-house counsel as well as outside counsel with Beatty & Wozniak, P.C.

Thank you for your consideration of DGC's response to the Notice. We look forward to discussing this matter with you further. If you have any questions regarding this response, please contact me at (701)557-5719.

Sincerely,



Maggie Olson
Senior Staff Counsel

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By email: gregory.ochs@dot.gov

cc: Todd Brickhouse, President
Dale Johnson, Senior Vice President & Plant Manager
Theresa Sauer, Beatty & Wozniak
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